



February 28, 2003

HOUSE BILL No. 1221

DIGEST OF HB 1221 (Updated February 26, 2003 3:31 PM - DI 69)

Citations Affected: IC 13-11; IC 13-14; IC 13-15; IC 13-17; IC 13-18; IC 13-19; noncode.

Synopsis: Various environmental matters. Establishes a permit program for the filling, dredging, and excavating of certain wetlands. Establishes a wetlands mitigation bank program. Establishes criteria for variances from water quality standards that are at least in part the basis of a National Pollutant Discharge Elimination System permit. Adds an economist to the membership of the air pollution control board, water pollution control board, and solid waste management board (boards) as a nonvoting advisory member. Specifies that ex officio members of the boards are nonvoting members. Repeals provisions allowing appointment of a proxy for meetings by ex officio board members. Requires the boards to contract with an individual, a business firm, or a legal firm to act as technical secretary. Allows the boards to contract with an individual or a legal firm to act as legal counsel. Transfers duties from the department of environmental management to the technical secretary.

Effective: Upon passage; July 1, 2003.

Bottorff

January 8, 2003, read first time and referred to Committee on Environmental Affairs.
February 27, 2003, amended, reported — Do Pass.

HB 1221—LS 7188/DI 52+



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February 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1221

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-11-2-16.3 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE UPON PASSAGE]: **Sec. 16.3. "Bank", for purposes of**
- 4 **IC 13-18-23, means the Indiana wetlands mitigation bank**
- 5 **established by IC 13-18-23-1.**
- 6 SECTION 2. IC 13-11-2-23.4 IS ADDED TO THE INDIANA
- 7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 8 [EFFECTIVE JULY 1, 2003]: **Sec. 23.4. "Category I wetland", for**
- 9 **purposes of IC 13-18-22, means an isolated wetland that supports**
- 10 **minimal wildlife habitat and minimal hydrological and**
- 11 **recreational functions.**
- 12 SECTION 3. IC 13-11-2-23.5 IS ADDED TO THE INDIANA
- 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 14 [EFFECTIVE JULY 1, 2003]: **Sec. 23.5. "Category II wetland", for**
- 15 **purposes of IC 13-18-22, means an isolated wetland that supports**
- 16 **moderate wildlife habitat or hydrological and recreational**
- 17 **functions.**

HB 1221—LS 7188/DI 52+



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SECTION 4. IC 13-11-2-23.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 23.6. "Category III wetland", for purposes of IC 13-18-22, means an isolated wetland that supports superior wildlife habitat or hydrological and recreational functions.**

SECTION 5. IC 13-11-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 29. "Clean Water Act", for purposes of IC 13-18-13, **IC 13-14-8, and IC 13-18-22**, refers to:

(1) 33 U.S.C. 1251 et seq.; and

(2) regulations adopted under 33 U.S.C. 1251 et seq.

SECTION 6. IC 13-11-2-36.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 36.3. "Compensatory mitigation", for purposes of IC 13-18-23, means the:**

(1) restoration;

(2) creation;

(3) enlargement; or

(4) enhancement;

of wetlands to offset or compensate for a loss of wetlands resulting from an authorized discharge of fill materials.

SECTION 7. IC 13-11-2-48.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 48.5. "CWA wetland", for purposes of IC 13-18-23, refers to a wetland that is navigable waters under Section 404(a) of the Clean Water Act.**

SECTION 8. IC 13-11-2-66.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 66.8. "Endangered Species Act", for purposes of IC 13-14-8, refers to:**

(1) 16 U.S.C. 1531 et seq.; and

(2) regulations adopted under 16 U.S.C. 1531 et seq.

SECTION 9. IC 13-11-2-91.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 91.5. "Great Lakes system", for purposes of IC 13-14-8, has the meaning set forth in 327 IAC 2-1.5-2(42), as in effect January 1, 2003.**

SECTION 10. IC 13-11-2-112.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 112.5. "Isolated wetland", for purposes of this chapter and IC 13-18-22, means a wetland not subject to the jurisdiction of:**



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(1) the United States Environmental Protection Agency; or

(2) the United States Army Corps of Engineers.

SECTION 11. IC 13-11-2-139.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 139.5. "New Great Lakes discharger"**, for purposes of IC 13-14-8, has the meaning set forth in 327 IAC 5-1.5-36, as in effect January 1, 2003.

SECTION 12. IC 13-11-2-139.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 139.8. "Newly formed wetland"**, for purposes of IC 13-18-22, means an isolated wetland:

(1) in an area that was not a wetland after July 1, 2003; and

(2) that was:

(A) created by the property owner;

(B) restored to improved wetland condition by the property owner;

(C) allowed by the property owner to be naturally restored to improved wetland condition; or

(D) created by natural or human activities outside the knowledge or control of the property owner.

SECTION 13. IC 13-11-2-178.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 178.5. "Recommencing discharger"**, for purposes of IC 13-14-8, has the meaning set forth in 327 IAC 5-1.5-50, as in effect January 1, 2003.

SECTION 14. IC 13-11-2-221.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 221.5. "State regulated wetland"**, for purposes of IC 13-18-23, means an isolated wetland located in Indiana that is not an exempt wetland.

SECTION 15. IC 13-11-2-245.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 245.5. "Volitional wetland"**, for purposes of IC 13-18-23, means an isolated wetland that:

(1) is located on:

(A) privately owned land; or

(B) publicly owned land;

(2) was restored, created, or expanded in the absence of a governmental order, directive, or regulatory requirement concerning the restoration, creation, or enlargement of the wetland; and

(3) has not been applied for or used as compensatory

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mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:

(A) the department; or

(B) another governmental entity.

SECTION 16. IC 13-11-2-265, AS AMENDED BY P.L.183-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265. (a) "Waters", for purposes of water pollution control laws and environmental management laws, means:

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or

(2) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana.

(b) The term "waters" does not include:

(1) a water body or wetland described in IC 13-18-22-1(b);

(2) a private pond; or

(3) an off-stream pond, reservoir, **wetland**, or **other** facility built for reduction or control of pollution or cooling of water before discharge. ~~unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.~~

SECTION 17. IC 13-11-2-265.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265.1. "Wetland activity", for purposes of IC 13-18-22, means the:

(1) filling;

(2) dredging; or

(3) excavation;

of an isolated wetland.

SECTION 18. IC 13-11-2-265.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265.2. "Wetlands", for purposes of IC 13-18-22, means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 19. IC 13-11-2-265.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 265.7. "Wetlands delineation", for purposes of IC 13-18-23, means a technical assessment of whether a wetland exists on an area of land and, if so, of what type and quality, based on the presence or absence of

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wetlands characteristics, as determined consistent with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers.

SECTION 20. IC 13-14-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) If a person who is affected by a rule adopted by a board believes that the imposition of the rule would impose an undue hardship or burden upon the person, the person may apply to the commissioner for a variance from the rule under:

(1) this section; or

(2) section 9 of this chapter if the variance sought is from a water quality standard.

(b) The commissioner may hold a public hearing on an application submitted under subsection (a).

(c) If the commissioner determines that immediate compliance with the rule would impose an undue hardship or burden upon the applicant, the commissioner, except as provided in section 9 of this chapter, may grant a variance from the rule for any period not exceeding one (1) year.

(d) Upon the request of an applicant, the commissioner may renew an expired variance if the commissioner determines that compliance with the rule would continue to impose an undue hardship or burden upon the applicant. Except as provided in section 9 of this chapter, each renewal may be granted for a period not exceeding one (1) year.

SECTION 21. IC 13-14-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) This section applies to a variance ~~granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal)~~ from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit issued under this title.

(b) **Except as provided in subsections (c) and (d), the commissioner may grant a variance under this section if the applicant for the variance:**

(1) demonstrates that a decision to grant the variance would comply with:

(A) 40 CFR 131.10;

(B) 40 CFR 131.12;

(C) 40 CFR 131.20; and

(D) 40 CFR 131.21; and

(2) demonstrates that attaining the water quality standard is not feasible because of at least one (1) of the following:

(A) Naturally occurring pollutant concentrations prevent

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the attainment of the water quality standard.

(B) Flow conditions or water levels that are:

- (i) natural;
- (ii) ephemeral;
- (iii) intermittent; or
- (iv) low;

prevent the attainment of the water quality standard unless those conditions can be compensated for by the discharge of a sufficient volume of effluent without violating state water conservation requirements.

(C) A condition or source of pollution caused by humans prevents the attainment of the water quality standard and:

- (i) the condition or source of pollution cannot be remedied; or
- (ii) correcting the condition or source of pollution would cause more environmental damage than leaving the condition or source of pollution in place.

(D) Dams, diversions, or other types of hydrologic modifications prevent the attainment of the water quality standard and it is not feasible to:

- (i) restore the water body to its original condition; or
- (ii) operate the modification in a way that would result in the attainment of the water quality standard.

(E) Physical conditions related to the natural features of the water body and unrelated to chemical water quality, including:

- (i) the lack of a proper substrate;
- (ii) cover;
- (iii) flow;
- (iv) depth;
- (v) pools;
- (vi) riffles; or
- (vii) similar conditions;

prevent the attainment of the aquatic life protection uses.

(F) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act:

- (i) would be necessary to attain the water quality standard; and
- (ii) if implemented, would result in substantial and widespread economic and social impact.

(c) The commissioner may not grant a variance under this section if:



- (1) water quality standards can be attained by:
- (A) implementing effluent limits required under Sections 301(b) and 306 of the Clean Water Act; and
 - (B) by the implementation of cost effective and reasonable best management practices for nonpoint source control; or
- (2) the variance:
- (A) would likely jeopardize the continued existence; or
 - (B) would likely result in the destruction or adverse modification of critical habitat;

of an endangered or threatened species listed under Section 4 of the Endangered Species Act.

(d) The commissioner may grant a variance under this section within the Great Lakes system:

- (1) to:
- (A) a new Great Lakes discharger; or
 - (B) a recommencing discharger;
- only under 327 IAC 2-1.5-17(a); and
- (2) only if the criteria in 40 CFR 132, Appendix F, Procedure 2 are met.

Except as provided in subsection (c), a variance from a water quality standard of the water pollution control board under section 8 of this chapter or IC 13-7-7-6 (before its repeal) may be:

(e) The commissioner may:

- (1) ~~granted~~ **grant a variance under this section** for not more than five (5) years; and
- (2) ~~renewed~~ **renew a variance under this section** for not more than five (5) years.

~~(c) (f)~~ A variance: ~~granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit:~~

- (1) ~~issued~~ **granted** under this title; ~~section;~~ and
- (2) extended under IC 13-15-3-6; ~~or IC 13-7-10-2(e) (before its repeal);~~

remains in effect until the National Pollutant Discharge Elimination System permit expires.

(g) To the extent that rules adopted by the water pollution control board are inconsistent with this section, the board shall amend the rules for granting variances under this section.

SECTION 22. IC 13-15-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The water pollution control board shall establish requirements for the issuance of



permits to control water pollution and atomic radiation, including the following:

- (1) Permits to control or limit the discharge of any contaminants into state waters or into a publicly owned treatment works.
- (2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the waters of Indiana or into a publicly owned treatment works.
- (3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the waters of Indiana or into a publicly owned treatment works.

However, the water pollution control board may not require a permit under subdivision (2) for any facility, equipment, or device constructed, installed, or modified as part of a surface coal mining operation that is operated under a permit issued under IC 14-34.

(b) The water pollution control board shall establish requirements for the issuance of permits for wetlands activity under IC 13-18-22 to:

- (1) assure no net loss of isolated wetlands in Indiana; and**
- (2) promote a net gain in high quality functions of wetlands.**

SECTION 23. IC 13-15-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A permit issued under:

- (1) this article (except IC 13-15-9);
- (2) IC 13-17-11;
- (3) IC 13-18-18; or
- (4) IC 13-20-1;

may be issued for any period determined by the department to be appropriate but not to exceed five (5) years.

(b) A permit issued under IC 13-18-22 for wetlands activity may be issued for any period determined by the department to be appropriate.

(c) Except as provided in federal law, a valid permit that has been issued under this chapter that concerns an activity of a continuing nature may be renewed for a period of not more than ten (10) years as determined by the department. The board shall adopt rules implementing this subsection.

(d) The commissioner may delegate authority to issue or deny permits to a designated staff member.

SECTION 24. IC 13-17-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The board consists



of the following ~~eleven (11)~~ **twelve (12)** members:

(1) The following ex officio, **nonvoting** members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing employed by an entity that has applied for or received a Title V operating permit.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

An individual appointed under this subdivision must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

(3) One (1) nonvoting advisory member who:

(A) is an economist; and

(B) shall be appointed by the governor.

SECTION 25. IC 13-17-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~ **(4) five (5)** of the appointed members of the board may be members of the same political party.

SECTION 26. IC 13-17-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. ~~Six (6)~~ **Five (5)** members of the board ~~four (4) of whom must be appointed members of the board;~~ constitute a quorum.

SECTION 27. IC 13-17-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The governor shall annually select:

(1) one (1) of the ~~eight (8)~~ appointed members of the board to serve as chairman; and

(2) another of the appointed members of the board to serve as vice



chairman.

SECTION 28. IC 13-17-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board shall select from a list of three (3) qualified individuals recommended by the governor; contract with:

(1) an individual who:

(A) is an independent third party; who and

(B) is not an employee of the state;

(2) a business firm; or

(3) a legal firm;

to serve as technical secretary of the board.

(b) During the interim between meetings of the board; The department technical secretary shall do the following:

(1) Handle correspondence.

(2) Make or arrange for investigations and surveys.

(3) Obtain, assemble, or prepare reports and data as directed by the board.

(c) The technical secretary shall:

(4) Review all materials prepared for the board by the department to make any necessary revisions.

(5) Serve as a hearing officer as directed by the board.

(6) Convene and lead meetings to discuss matters pending before the board.

(7) Initiate and manage rulemaking efforts in cooperation with the department.

(c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.

(d) The technical secretary is not a voting member of the board.

SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor; contract with:

(1) an individual who:

(A) is an independent third party; who and

(B) is not an employee of the state; or

(2) a legal firm;

to serve as legal counsel.

(b) The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the technical



1 **secretary and the** department for legal accuracy and sufficiency
 2 and direct the **technical secretary and the** department to make
 3 any necessary revisions.

4 ~~(b)~~ **(c)** Provisions of this chapter concerning terms of appointment,
 5 vacancies, and compensation of appointed board members apply to the
 6 legal counsel. The legal counsel is not a voting member of the board.

7 SECTION 30. IC 13-18-1-2 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board
 9 consists of the following ~~eleven (11)~~ **twelve (12)** members:

10 (1) The following ex officio, **nonvoting** members:

11 (A) The commissioner of the state department of health.

12 (B) The director of the department of natural resources.

13 (C) The lieutenant governor.

14 (2) The following eight (8) members, who shall be appointed by
 15 the governor based on recommendations from representative
 16 constituencies:

17 (A) One (1) representative of agriculture.

18 (B) One (1) representative of manufacturing employed by an
 19 entity that holds an NPDES major permit.

20 (C) One (1) representative of environmental interests.

21 (D) One (1) representative of labor.

22 (E) One (1) representative of local government.

23 (F) One (1) health professional who holds a license to practice
 24 in Indiana.

25 (G) One (1) representative of small business.

26 (H) One (1) representative of the general public, who cannot
 27 qualify to sit on the board under any of the other clauses in this
 28 subdivision.

29 **(3) One (1) nonvoting advisory member who:**

30 **(A) is an economist; and**

31 **(B) shall be appointed by the governor.**

32 (b) An individual appointed under subsection (a)(2) must possess
 33 knowledge, experience, or education qualifying the individual to
 34 represent the entity the individual is being recommended to represent.

35 SECTION 31. IC 13-18-1-3 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~
 37 ~~(4)~~ **five (5)** of the appointed members of the board may be members of
 38 the same political party.

39 SECTION 32. IC 13-18-1-9 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. ~~Six (6)~~ **Five (5)**
 41 members of the board ~~four (4) of whom must be appointed members of~~
 42 ~~the board~~; constitute a quorum.



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SECTION 33. IC 13-18-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board shall ~~select from a list of three (3) qualified individuals recommended by the governor;~~ **contract with:**

(1) **an individual who:**

(A) **is an independent third party; who and**

(B) **is not an employee of the state;**

(2) **a business firm; or**

(3) **a legal firm;**

to serve as technical secretary of the board.

(b) ~~Between meetings of the board;~~ The **department technical secretary** shall do the following:

(1) Handle correspondence.

(2) Make or arrange for investigations and surveys.

(3) Obtain, assemble, or prepare reports and data as directed by the board.

~~(c) The technical secretary shall:~~

(4) Review all materials prepared for the board by the department to make any necessary revisions.

(5) **Serve as a hearing officer as directed by the board.**

(6) **Convene and lead meetings to discuss matters pending before the board.**

(7) **Initiate and manage rulemaking efforts in cooperation with the department.**

(c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.

(d) The technical secretary is not a voting member of the board.

SECTION 34. IC 13-18-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board may ~~select from a list of three (3) qualified individuals recommended by the governor;~~ **contract with:**

(1) **an individual who:**

(A) **is an independent third party; who and**

(B) **is not an employee of the state; or**

(2) **a legal firm;**

to serve as legal counsel.

(b) The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the **technical secretary and the department** for legal accuracy and sufficiency

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and direct the **technical secretary and the** department to make any necessary revisions.

~~(b)~~ **(c)** Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

SECTION 35. IC 13-18-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. **(a)** The ~~water pollution control~~ board shall adopt rules for the control and prevention of pollution in waters of Indiana with any substance:

(1) that is deleterious to:

(A) the public health; or

(B) the prosecution of any industry or lawful occupation; or

(2) by which:

(A) any fish life or any beneficial animal or vegetable life may be destroyed; or

(B) the growth or propagation of fish life or beneficial animal or vegetable life is prevented or injuriously affected.

(b) The board shall adopt rules to establish the period in which the department must act on an application for certification under Section 401 of the Clean Water Act. Until the board adopts rules to establish the period, the department must act on an application not later than one hundred twenty (120) days after the date the application is filed with the department.

SECTION 36. IC 13-18-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 22. Wetlands

Sec. 1. (a) Except as provided in subsections (b), (c), and (d), a permit is required for wetland activities in an isolated wetland.

(b) A permit under subsection (a) is not required for wetland activities in the following:

(1) A manmade water body and the wetland fringe of the water body that:

(A) serve a beneficial use; and

(B) are not constructed to fulfill a wetland regulatory purpose;

including storm water retention and detention ponds, ornamental ponds, livestock watering ponds, fishing ponds, or ponds constructed for pollution control purposes.

(2) A newly formed wetland that is not used for:

(A) a compensatory mitigation purpose; or

(B) another regulatory purpose.



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(3) A wetland regulated under a federal agricultural law supervised by the Natural Resource Conservation Service of the United States Department of Agriculture.

(4) A Category I wetland smaller than one-half (1/2) acre.

(5) A wetland created solely as the result of actions that were taken for a purpose other than creating the wetland.

(6) Other wetlands, as established by the board.

(c) A permit under subsection (a) is not required for agricultural activities listed under Section 404(f) of the Clean Water Act.

(d) A permit under subsection (a) is not required for any activity for which the department of natural resources has approved a plan to minimize, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish and wildlife and related environmental values and to enhance those resources where practicable.

Sec. 2. The department shall issue an individual permit to a person for wetland activities in an isolated wetland if:

(1) the person meets the requirements of section 3 of this chapter; and

(2) the general permit requirements of section 5 of this chapter do not apply.

Sec. 3. A person qualifies for an individual permit under section 2 of this chapter if the person meets the requirements of the individual permit rule adopted under section 4 of this chapter.

Sec. 4. The board shall adopt a rule before July 1, 2005, for the administration of individual permits under this chapter that must include:

(1) an application form that includes:

(A) the wetland categorization;

(B) a wetland delineation;

(C) a project description;

(D) a description of the acreage subject to the wetland activity; and

(E) site photographs;

(2) a demonstration that wetland disturbance cannot be avoided;

(3) a demonstration that wetland disturbance is minimized;

(4) a commitment that water quality in surface waters of the state will not be degraded as the result of the wetland activity;

(5) circumstances and conditions for mitigation requirements;

(6) the time permitted for the department to make a

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determination on the application; and

(7) a requirement that the department publish notice under IC 5-3-1:

(A) of receipt of an application for an individual permit; and

(B) that the department will hold a public hearing on the application in the county where the wetland is located if:

(i) a person requests a public hearing not later than fifteen (15) days after the date of publication; and

(ii) the department determines there is sufficient interest to hold a public hearing.

Sec. 5. A person qualifies under a general permit for wetland activity if the wetland activity proposed by the person meets the requirements of the general permit rule adopted under section 6 of this chapter.

Sec. 6. The board shall adopt a rule before July 1, 2005, for the administration of general permits under this chapter that must include:

(1) procedures for submission to the department of a notice of intent to conduct wetland activity under a general permit that includes:

(A) a demonstration that wetland disturbance cannot be avoided;

(B) a demonstration that wetland disturbance is minimized; and

(C) a proposed mitigation project;

(2) a period of not more than thirty (30) days after the submission of the notice of intent under subdivision (1) during which the department may review whether the criteria for the general permit are met; and

(3) procedures under which the department:

(A) may, after a determination under subdivision (2) that the criteria for the general permit are not met, require the person to apply for an individual permit under this chapter; and

(B) must provide to the person a written statement of its reasons for the determination under clause (A).

Sec. 7. (a) The board shall adopt a rule before July 1, 2005, to establish procedures to:

(1) designate specific real property as outstanding state wetlands; and

(2) remove real property from the designation under

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subdivision (1).

(b) The rule under subsection (a):

(1) may permit designation as outstanding state wetlands only real property that includes:

(A) wetlands that are rare and ecologically important; and

(B) a suitable buffer area surrounding the wetlands; and

(2) must prohibit wetland activity on outstanding state wetlands unless the wetland activity:

(A) is temporary; or

(B) is designed to maintain ecologically important wetland qualities.

(c) If real property is designated under this section as outstanding state wetlands:

(1) the real property must be designated as a permanent conservation easement under IC 32-23-5; and

(2) the department:

(A) shall compensate the owner of the real property for the loss of development rights to the property; and

(B) if the designation under subdivision (1) results in a reduction of the property tax assessment of the real property, annually pay to the county an amount equal to the resultant reduction of property taxes due and payable on the property during the year.

Sec. 8. (a) The department shall create and maintain a registry of newly formed wetlands that maintains documentation that the area was not a wetland at a particular time.

(b) The department may charge:

(1) a fee of not more than one hundred dollars (\$100) for registration in the registry under subsection (a); and

(2) a fee of not more than fifty dollars (\$50) per year to maintain the registration.

(c) The department shall use the revenue from the fees under subsection (b) for the operation of the registry under subsection (a).

Sec. 9. (a) A requirement for compliance with surface water quality standards is incorporated into each permit under this chapter for the duration of the wetland activity.

(b) Noncompliance with the permit is not a violation of water quality standards unless the quality of the water leaving the project area is impaired.

SECTION 37. IC 13-18-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE



UPON PASSAGE]:

Chapter 23. Indiana Wetlands Mitigation Bank Program

Sec. 1. The bank program is established to promote the restoration, creation, or enlargement of wetlands that may be used as mitigation credits to offset losses of regulated wetlands occurring as a result of development projects.

Sec. 2. (a) Mitigation credits acquired from owners of wetlands registered in the bank under this chapter may be used to provide compensatory mitigation for projects at any location in Indiana involving a discharge of fill materials into:

- (1) a state regulated wetland; or**
- (2) if the mitigation credits meet applicable eligibility criteria under federal law, a CWA wetland.**

(b) The application of mitigation credits acquired under this chapter to compensatory mitigation needs associated with a project involving the discharge of fill materials into a state regulated wetland must be consistent with the following:

- (1) The mitigation credits may be applied regardless of the relative locations of the wetland in the bank on which the credits are based and the state regulated wetland to be filled.**
- (2) The ratio of mitigation credits to the acreage of state regulated wetland to be filled must be:**
 - (A) one to one (1:1) if the mitigation credits are based on a wetland of the same general type as the state regulated wetland to be filled;**
 - (B) three to one (3:1) if the state regulated wetland being filled is a Category III wetland; or**
 - (C) one and one-half to one (1.5:1) in all other cases.**

(c) For purposes of subsection (b)(2), the general wetland types are:

- (1) open water/emergent wetlands;**
- (2) scrub/shrub wetlands; and**
- (3) forested wetlands.**

(d) Any additional conditions determined by the board in rules adopted under subsection (f) must be reasonable, necessary, and consistent with this chapter.

(e) The department shall administer the bank program in accordance with this chapter.

(f) The board shall adopt procedural rules under IC 4-22-2 and IC 13-14 not later than December 1, 2004, to facilitate:

- (1) the administration of the bank; and**
- (2) transactions involving mitigation credits for wetlands**



1 registered with the bank;
 2 consistent with this chapter. Implementation of this chapter may
 3 not be delayed while rules are being developed by the board under
 4 this subsection.

5 Sec. 3. (a) A wetland must be registered with the bank before
 6 mitigation credits based on the wetlands may be sold for use under
 7 this chapter. Wetlands that may be registered with the bank
 8 include:

9 (1) volitional wetlands existing before the effective date of this
 10 chapter; and

11 (2) volitional wetlands restored, created, or enlarged after the
 12 effective date of this chapter.

13 (b) To register a wetland with the bank, the owner of the
 14 wetland must submit a registration form to the department that:

15 (1) identifies the voluntary wetland by location and acreage;

16 (2) provides the name and address of the owner;

17 (3) states when the restoration, creation, or enlargement of
 18 the wetland began;

19 (4) represents that the wetland is not:

20 (A) a state regulated wetland; or

21 (B) a CWA wetland;

22 (5) includes a wetlands delineation report that describes:

23 (A) the type of the wetland;

24 (B) the quality of the wetland, taking into consideration its
 25 age, type, and hydrogeologic setting; and

26 (C) the expected stability of the wetland; and

27 (6) includes a one (1) time registration fee in the amount of the
 28 lesser of:

29 (i) ten dollars (\$10) per acre; or

30 (ii) one hundred dollars (\$100) per wetland.

31 (c) The department shall provide a form for registration of
 32 wetlands with the bank.

33 (d) The department may refuse to register a wetland proposed
 34 for the bank if:

35 (1) the quality of the wetland is not reasonably consistent with
 36 its age, type, and hydrogeologic setting; or

37 (2) the wetland's features and quality are not stable.

38 (e) The department shall:

39 (1) give written notice of its refusal to register a wetland in the
 40 bank to the person that submitted the registration form for
 41 the wetland not later than ninety (90) days after the
 42 department's receipt of the registration form; and

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(2) support its refusal with a statement of reasons.
 If notification of a refusal to register a wetland is not provided as described in this subsection, a wetland for which a registration form is submitted to the department in accordance with this section is considered to be registered in the bank.

(f) A property owner may notify the department of intent to register a wetland with the bank before restoration, creation, or enlargement of the wetland.

(g) The owner of a wetland that has been registered with the bank may cancel the registration and withdraw the wetland from the bank at any time before mitigation credits are sold under this chapter on the basis of the registered wetland.

Sec. 4. (a) A person may acquire wetlands mitigation credits to satisfy compensatory mitigation needs by the purchase of credits at market price from an owner of wetlands acreage registered in the bank. The mitigation credits may be used to provide compensatory mitigation for projects involving a discharge of fill materials into:

- (1) a state regulated wetland; or
- (2) if the credits satisfy federal criteria for mitigation banks, a CWA wetland.

One (1) unit of credit corresponds to one (1) acre of registered wetlands. Fractional credits may be purchased.

(b) A person that purchases wetlands mitigation credits under this section shall do the following:

- (1) Not later than five (5) days after the date of purchase, give the department a notice of the purchase in writing that includes the following:

- (A) The name and address of the purchaser.
- (B) The name and address of the seller.
- (C) The amount of credits purchased.
- (D) The registration number and location of the registered wetland corresponding to the credits purchased.
- (E) The purchase price.

- (2) Pay a fee of twenty-five dollars (\$25) to the department with respect to each sale of credits of any amount based on a wetland registered with the bank.

(c) A registered wetland that is the basis of a sale of mitigation credits under subsection (a) is reclassified as a state regulated wetland when the credits sold correspond to the entire acreage of the registered wetland.

- (d) If the sale of credits involves less than the total acreage of



the registered wetland:

(1) the fraction of the acreage of the registered wetland not committed to a sale of credits remains available for future sale of mitigation credits; and

(2) the wetland is reclassified as a transitional registered wetland.

(e) A transitional registered wetland is reclassified as a state regulated wetland when the cumulative credits sold with respect to the transitional registered wetland correspond to the entire acreage of the wetland.

(f) No action by the department is required to effectuate the reclassification of a wetland under this section.

(g) A wetland may not remain in transitional registered wetland status for more than ten (10) years. A transitional registered wetland is reclassified as a state regulated wetland at the end of the ten (10) year period beginning on the date of the initial sale of credits based on the wetland if the full number of potential mitigation credits corresponding to the transitional registered wetland is not sold by the end of that period. If a wetland has been reclassified as a state regulated wetland under this subsection, the owner of the wetland property may continue to sell the credits corresponding to the wetland that remain unsold at the time of the reclassification.

(h) A person that has purchased mitigation credits under this section but has not applied the credits to compensatory mitigation requirements for a wetlands development project may resell some or all of the credits to another person. If the owner of a registered wetland redeems mitigation credits previously sold to another person by repurchasing the credits, the amount of redeemed credits is restored to the remaining credit balance in the bank pertaining to the registered wetland.

(i) Each owner of a registered wetland shall provide to the department not later than March 1 of each year a summary of transactions involving credits in the registered wetland that occurred during the preceding calendar year.

(j) The department shall maintain records on each wetland registered in the bank that include:

(1) the acreage and location of the wetland;

(2) the cumulative number of mitigation credits sold on the basis of the registered wetland;

(3) the remaining balance of credits available for sale attributable to the registered wetland;



(4) the date of each sale of mitigation credits and the number of credits sold; and

(5) the name and address of the current owner of each mitigation credit sold on the basis of the registered wetland.

SECTION 38. IC 13-19-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board consists of ~~thirteen (13)~~ **fourteen (14)** members as follows:

(1) The following ex officio, **nonvoting** members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following ten (10) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

(I) One (1) representative of the solid waste management industry.

(J) One (1) representative of the solid waste management districts.

(3) One (1) nonvoting advisory member who:

(A) is an economist; and

(B) shall be appointed by the governor.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 39. IC 13-19-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~five (5)~~ **six (6)** of the appointed members of the board may be members of the same political party.

SECTION 40. IC 13-19-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. ~~Seven (7)~~ **Six (6)** members of the board ~~four (4) of whom must be appointed members of~~



1 ~~the board~~, constitute a quorum.

2 SECTION 41. IC 13-19-2-9 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. The governor shall
4 annually select:

5 (1) one (1) of the ~~ten (10)~~ appointed members of the board to
6 serve as chairman; and

7 (2) another of the appointed members of the board to serve as vice
8 chairman.

9 SECTION 42. IC 13-19-2-10 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) The board shall
11 ~~select from a list of three (3) qualified persons recommended by the~~
12 ~~governor, contract with:~~

13 (1) an **individual who:**

14 (A) **is an independent third party; who and**

15 (B) **is not an employee of the state;**

16 (2) **a business firm; or**

17 (3) **a legal firm;**

18 to serve as technical secretary of the board.

19 (b) ~~During the interim between meetings of the board, The~~
20 ~~department technical secretary~~ shall do the following:

21 (1) Handle correspondence.

22 (2) Make or arrange for investigations and surveys.

23 (3) Obtain, assemble, or prepare reports and data as directed by
24 the board.

25 ~~(c) The technical secretary shall:~~

26 (4) Review all materials prepared for the board by the department
27 to make any necessary revisions.

28 (5) **Serve as a hearing officer as directed by the board.**

29 (6) **Convene and lead meetings to discuss matters pending**
30 **before the board.**

31 (7) **Initiate and manage rulemaking efforts in cooperation**
32 **with the department.**

33 (c) Provisions of this chapter concerning terms of appointment,
34 vacancies, and compensation of appointed board members apply to the
35 technical secretary.

36 (d) The technical secretary is not a voting member of the board.

37 SECTION 43. IC 13-19-2-11 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board may
39 ~~select from a list of three (3) qualified persons recommended by the~~
40 ~~governor, contract with:~~

41 (1) an **individual who:**

42 (A) **is an independent third party; who and**

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1 **(B)** is not an employee of the state; **or**

2 **(2) a legal firm;**
3 to serve as legal counsel.

4 **(b)** The legal counsel shall do the following:

5 (1) Advise the board on legal matters or proceedings arising from
6 the exercise of the board's duties.

7 (2) Review all materials prepared for the board by the **technical**
8 **secretary and the** department for legal accuracy and sufficiency
9 and direct the **technical secretary and the** department to make
10 any necessary revisions.

11 ~~(b)~~ **(c)** Provisions of this chapter concerning terms of appointment,
12 vacancies, and compensation of appointed board members apply to the
13 legal counsel. The legal counsel is not a voting member of the board.

14 SECTION 44. THE FOLLOWING ARE REPEALED [EFFECTIVE
15 JULY 1, 2003]: IC 13-17-2-6; IC 13-18-1-4; IC 13-19-2-4.

16 SECTION 45. [EFFECTIVE JULY 1, 2003] **(a) The definitions in**
17 **IC 13-11-2, as amended by this act, apply throughout this**
18 **SECTION.**

19 **(b) Before September 1, 2003, the department shall develop and**
20 **present to the water pollution control board a policy or statement**
21 **under IC 13-14-1-11.5 that does the following:**

22 **(1) Requires, consistent with IC 13-18-22, as added by this act,**
23 **the filing of an application with the department for an**
24 **individual permit for wetland activity that occurs:**

25 **(A) after June 30, 2003; and**

26 **(B) before the effective date of the rules adopted under:**

27 **(i) IC 13-18-22-4; and**

28 **(ii) IC 13-18-22-6;**

29 **both as added by this act.**

30 **(2) With respect to an application under subdivision (1),**
31 **establishes:**

32 **(A) the factors the department will consider in reviewing**
33 **the application;**

34 **(B) procedures for:**

35 **(i) filing of applications;**

36 **(ii) action by the department; and**

37 **(iii) appeals of actions by the department; and**

38 **(C) the period not to exceed one hundred twenty (120) days**
39 **within which the department must act.**

40 **(3) Establishes the attributes of categories of isolated wetlands**
41 **to which the filing requirements of subdivision (1) apply that**
42 **are consistent with the following:**



- 1 (A) For a Category I wetland, characterized by:
 2 (i) hydrologic isolation;
 3 (ii) low species diversity;
 4 (iii) a predominance of nonnative species, including
 5 greater than fifty percent (50%) areal cover for
 6 vegetative species;
 7 (iv) no significant habitat or wildlife use; and
 8 (v) limited potential to achieve beneficial wetlands
 9 functions.
- 10 (B) For a Category II wetland, characterized by:
 11 (i) domination by native species but generally without
 12 the presence of, or the habitat for, rare, threatened, or
 13 endangered species; and
 14 (ii) degradation, but with reasonable potential for
 15 reestablishing wetlands functions.
- 16 (C) For a Category III wetland, characterized by:
 17 (i) high levels of diversity;
 18 (ii) high proportion of native species; and
 19 (iii) high functional values.
- 20 (4) Establishes, consistent with IC 13-18-22, as added by this
 21 act, criteria for general permits:
 22 (A) comparable to those addressed by nationwide permits
 23 under Section 404 of the Clean Water Act; and
 24 (B) for wetland activity affecting:
 25 (i) Category I wetlands; and
 26 (ii) Category II wetlands;
 27 smaller than one-half (1/2) acre.
- 28 (5) Addresses any other matter the department considers
 29 necessary to administer the process described in this
 30 subsection:
 31 (A) after June 30, 2003; and
 32 (B) before the effective date of the rules adopted under:
 33 (i) IC 13-18-22-4; and
 34 (ii) IC 13-18-22-6;
 35 both as added by this act.
- 36 (c) The department's policies or statements under subsection (b)
 37 must, to the greatest extent possible, be consistent with
 38 IC 13-18-22, as added by this act.
- 39 (d) The department shall, before November 1, 2003, and again
 40 before November 1, 2004, report to the environmental quality
 41 service council on the progress of:
 42 (1) the development of the policies or statements under



subsection (b); and

(2) the adoption of rules under:

(A) IC 13-15-1-2; and

(B) IC 13-18-22.

(e) The following expire September 1, 2005:

(1) The department's statement or policy under subsection (b).

(2) This SECTION.

SECTION 46. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

(1) Monitor the implementation of this act.

(2) Review the role of the department of environmental management with respect to action on requests under section 401 of the Clean Water Act (33 U.S.C. 1341) for certifications concerning projects subject to permit requirements under section 404 of the Clean Water Act (33 U.S.C. 1344), and recommend whether statutory direction is appropriate or necessary in defining that role.

(3) Complete its consideration of the options for statutory definition of "private pond" as applied in the definition of "waters" in IC 13-11-2-265, and recommend an option, including a statement of rationale.

(4) Evaluate the tensions between existing programs for wetlands protection and for local drainage, and recommend principles and policies for ameliorating those tensions, taking into consideration the rationale and objectives for both programs.

(5) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:

(A) as a long term strategy, the types and functions of wetlands that are valued in particular geographic areas; and

(B) the means for restoring, maintaining, and protecting wetlands, including identification of agencies to be involved and the incentives to be offered.

(6) Recommend:

(A) composition;

(B) responsibilities;

(C) staffing; and

(D) funding;



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1 of a permanent state wetlands conservation council.

2 (7) Evaluate the usefulness of a statute to create an Indiana
3 wetland conservation commission for the purpose of
4 coordinating state agency implementation of the state wetland
5 policy.

6 (8) Submit its final report on the matters described in the
7 preceding four subdivisions before November 1, 2003, to:

8 (A) the governor; and

9 (B) the executive director of the legislative services agency.

10 (b) The environmental quality service council shall:

11 (1) conduct an ongoing evaluation during the period from
12 July 1, 2003, to November 1, 2006, of the implementation of:

13 (A) the permit program for wetlands under IC 13-18-22;
14 and

15 (B) the Indiana wetlands mitigation bank program under
16 IC 13-18-23;

17 both as established under this act;

18 (2) recommend any adjustments to either program referred
19 to in subdivision (1) that are considered advisable to improve
20 the operation and effectiveness of the programs, consistent
21 with the purpose of providing an efficient permitting process
22 and enhancing the attainment of an overall goal of no net loss
23 of wetlands; and

24 (3) submit its final report on the matters described in this
25 subsection before November 1, 2005, to:

26 (A) the governor; and

27 (B) the executive director of the legislative services agency.

28 (c) This SECTION expires November 1, 2006.

29 SECTION 47. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1221, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-16.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16.3. "Bank", for purposes of IC 13-18-23, means the Indiana wetlands mitigation bank established by IC 13-18-23-1.**

SECTION 2. IC 13-11-2-23.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 23.4. "Category I wetland", for purposes of IC 13-18-22, means an isolated wetland that supports minimal wildlife habitat and minimal hydrological and recreational functions.**

SECTION 3. IC 13-11-2-23.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 23.5. "Category II wetland", for purposes of IC 13-18-22, means an isolated wetland that supports moderate wildlife habitat or hydrological and recreational functions.**

SECTION 4. IC 13-11-2-23.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 23.6. "Category III wetland", for purposes of IC 13-18-22, means an isolated wetland that supports superior wildlife habitat or hydrological and recreational functions."**

Page 1, line 3, delete "and" and insert ",".

Page 1, line 3, after "IC 13-14-8," insert "**and IC 13-18-22,**".

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 6. IC 13-11-2-36.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 36.3. "Compensatory mitigation", for purposes of IC 13-18-23, means the:**

- (1) restoration;
- (2) creation;
- (3) enlargement; or
- (4) enhancement;

of wetlands to offset or compensate for a loss of wetlands resulting

HB 1221—LS 7188/DI 52+



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from an authorized discharge of fill materials.

SECTION 7. IC 13-11-2-48.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 48.5. "CWA wetland", for purposes of IC 13-18-23, refers to a wetland that is navigable waters under Section 404(a) of the Clean Water Act."**

Page 1, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 10. IC 13-11-2-112.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 112.5. "Isolated wetland", for purposes of this chapter and IC 13-18-22, means a wetland not subject to the jurisdiction of:**

- (1) the United States Environmental Protection Agency; or**
- (2) the United States Army Corps of Engineers."**

Page 2, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 12. IC 13-11-2-139.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 139.8. "Newly formed wetland", for purposes of IC 13-18-22, means an isolated wetland:**

- (1) in an area that was not a wetland after July 1, 2003; and**
- (2) that was:**
 - (A) created by the property owner;**
 - (B) restored to improved wetland condition by the property owner;**
 - (C) allowed by the property owner to be naturally restored to improved wetland condition; or**
 - (D) created by natural or human activities outside the knowledge or control of the property owner."**

Page 2, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 14. IC 13-11-2-221.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 221.5. "State regulated wetland", for purposes of IC 13-18-23, means an isolated wetland located in Indiana that is not an exempt wetland.**

SECTION 15. IC 13-11-2-245.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 245.5. "Volitional wetland", for purposes of IC 13-18-23, means an isolated wetland that:**

- (1) is located on:**
 - (A) privately owned land; or**
 - (B) publicly owned land;**
- (2) was restored, created, or expanded in the absence of a**

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governmental order, directive, or regulatory requirement concerning the restoration, creation, or enlargement of the wetland; and

(3) has not been applied for or used as compensatory mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:

(A) the department; or

(B) another governmental entity.

SECTION 16. IC 13-11-2-265, AS AMENDED BY P.L.183-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265. (a) "Waters", for purposes of water pollution control laws and environmental management laws, means:

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or

(2) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana.

(b) The term "waters" does not include:

(1) a water body or wetland described in IC 13-18-22-1(b);

(2) a private pond; or

(3) an off-stream pond, reservoir, **wetland**, or **other** facility built for reduction or control of pollution or cooling of water before discharge. ~~unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.~~

SECTION 17. IC 13-11-2-265.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265.1. "Wetland activity", for purposes of IC 13-18-22, means the:

(1) filling;

(2) dredging; or

(3) excavation;

of an isolated wetland.

SECTION 18. IC 13-11-2-265.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265.2. "Wetlands", for purposes of IC 13-18-22, means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 19. IC 13-11-2-265.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



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[EFFECTIVE UPON PASSAGE]: **Sec. 265.7. "Wetlands delineation", for purposes of IC 13-18-23, means a technical assessment of whether a wetland exists on an area of land and, if so, of what type and quality, based on the presence or absence of wetlands characteristics, as determined consistent with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers."**

Page 5, after line 3, begin a new paragraph and insert:

"SECTION 22. IC 13-15-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. **(a)** The water pollution control board shall establish requirements for the issuance of permits to control water pollution and atomic radiation, including the following:

- (1) Permits to control or limit the discharge of any contaminants into state waters or into a publicly owned treatment works.
- (2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the waters of Indiana or into a publicly owned treatment works.
- (3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the waters of Indiana or into a publicly owned treatment works.

However, the water pollution control board may not require a permit under subdivision (2) for any facility, equipment, or device constructed, installed, or modified as part of a surface coal mining operation that is operated under a permit issued under IC 14-34.

(b) The water pollution control board shall establish requirements for the issuance of permits for wetlands activity under IC 13-18-22 to:

- (1) assure no net loss of isolated wetlands in Indiana; and**
- (2) promote a net gain in high quality functions of wetlands.**

SECTION 23. IC 13-15-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A permit issued under:

- (1) this article (except IC 13-15-9);
- (2) IC 13-17-11;
- (3) IC 13-18-18; or
- (4) IC 13-20-1;

may be issued for any period determined by the department to be appropriate but not to exceed five (5) years.

(b) A permit issued under IC 13-18-22 for wetlands activity may

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be issued for any period determined by the department to be appropriate.

(c) Except as provided in federal law, a valid permit that has been issued under this chapter that concerns an activity of a continuing nature may be renewed for a period of not more than ten (10) years as determined by the department. The board shall adopt rules implementing this subsection.

~~(c)~~ (d) The commissioner may delegate authority to issue or deny permits to a designated staff member.

SECTION 24. IC 13-17-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The board consists of the following ~~eleven (11)~~ **twelve (12)** members:

(1) The following ex officio, **nonvoting** members:

- (A) The commissioner of the state department of health.
- (B) The director of the department of natural resources.
- (C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

- (A) One (1) representative of agriculture.
- (B) One (1) representative of manufacturing employed by an entity that has applied for or received a Title V operating permit.
- (C) One (1) representative of environmental interests.
- (D) One (1) representative of labor.
- (E) One (1) representative of local government.
- (F) One (1) health professional who holds a license to practice in Indiana.
- (G) One (1) representative of small business.
- (H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

An individual appointed under this subdivision must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

(3) One (1) nonvoting advisory member who:

- (A) is an economist; and**
- (B) shall be appointed by the governor.**

SECTION 25. IC 13-17-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~ **(4) five (5)** of the appointed members of the board may be members of



the same political party.

SECTION 26. IC 13-17-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. ~~Six (6)~~ **Five (5)** members of the board ~~four (4) of whom must be appointed members of the board;~~ constitute a quorum.

SECTION 27. IC 13-17-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The governor shall annually select:

- (1) one (1) of the ~~eight (8)~~ appointed members of the board to serve as chairman; and
- (2) another of the appointed members of the board to serve as vice chairman.

SECTION 28. IC 13-17-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board shall ~~select from a list of three (3) qualified individuals recommended by the governor;~~ **contract with:**

- (1) an individual who:**
 - (A) is an independent third party; who and**
 - (B) is not an employee of the state;**
- (2) a business firm; or**
- (3) a legal firm;**

to serve as technical secretary of the board.

(b) ~~During the interim between meetings of the board;~~ The ~~department technical secretary~~ shall do the following:

- (1) Handle correspondence.
- (2) Make or arrange for investigations and surveys.
- (3) Obtain, assemble, or prepare reports and data as directed by the board.

~~(c) The technical secretary shall:~~

- (4) Review all materials prepared for the board by the department to make any necessary revisions.**
- (5) Serve as a hearing officer as directed by the board.**
- (6) Convene and lead meetings to discuss matters pending before the board.**
- (7) Initiate and manage rulemaking efforts in cooperation with the department.**

(c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.

(d) The technical secretary is not a voting member of the board.

SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may

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select from a list of three ~~(3)~~ qualified individuals recommended by the governor; contract with:

(1) an individual who:

(A) is an independent third party; who and

(B) is not an employee of the state; or

(2) a legal firm;

to serve as legal counsel.

(b) The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the **technical secretary and the** department for legal accuracy and sufficiency and direct the **technical secretary and the** department to make any necessary revisions.

~~(b)~~ (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

SECTION 30. IC 13-18-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board consists of the following ~~eleven (11)~~ **twelve (12)** members:

(1) The following ex officio, **nonvoting** members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing employed by an entity that holds an NPDES major permit.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

(3) **One (1) nonvoting advisory member who:**

(A) is an economist; and

(B) shall be appointed by the governor.



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(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 31. IC 13-18-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~ **(4) five (5)** of the appointed members of the board may be members of the same political party.

SECTION 32. IC 13-18-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. ~~Six (6)~~ **Five (5)** members of the board ~~four (4) of whom must be appointed members of the board;~~ constitute a quorum.

SECTION 33. IC 13-18-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board shall ~~select from a list of three (3) qualified individuals recommended by the governor;~~ **contract with:**

(1) an individual who:

(A) is an independent third party; who and

(B) is not an employee of the state;

(2) a business firm; or

(3) a legal firm;

to serve as technical secretary of the board.

(b) ~~Between meetings of the board;~~ The **department technical secretary** shall do the following:

(1) Handle correspondence.

(2) Make or arrange for investigations and surveys.

(3) Obtain, assemble, or prepare reports and data as directed by the board.

~~(c) The technical secretary shall:~~

(4) Review all materials prepared for the board by the department to make any necessary revisions.

(5) Serve as a hearing officer as directed by the board.

(6) Convene and lead meetings to discuss matters pending before the board.

(7) Initiate and manage rulemaking efforts in cooperation with the department.

(c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.

(d) The technical secretary is not a voting member of the board.

SECTION 34. IC 13-18-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board may ~~select from a list of three (3) qualified individuals recommended by the~~

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~~governor, contract with:~~

(1) an **individual who:**

(A) **is an** independent third party; ~~who and~~

(B) is not an employee of the state; **or**

(2) **a legal firm;**

to serve as legal counsel.

(b) The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the **technical secretary and the** department for legal accuracy and sufficiency and direct the **technical secretary and the** department to make any necessary revisions.

~~(b)~~ (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

SECTION 35. IC 13-18-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The ~~water pollution control~~ board shall adopt rules for the control and prevention of pollution in waters of Indiana with any substance:

(1) that is deleterious to:

(A) the public health; or

(B) the prosecution of any industry or lawful occupation; or

(2) by which:

(A) any fish life or any beneficial animal or vegetable life may be destroyed; or

(B) the growth or propagation of fish life or beneficial animal or vegetable life is prevented or injuriously affected.

(b) **The board shall adopt rules to establish the period in which the department must act on an application for certification under Section 401 of the Clean Water Act. Until the board adopts rules to establish the period, the department must act on an application not later than one hundred twenty (120) days after the date the application is filed with the department.**

SECTION 36. IC 13-18-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 22. Wetlands

Sec. 1. (a) Except as provided in subsections (b), (c), and (d), a permit is required for wetland activities in an isolated wetland.

(b) A permit under subsection (a) is not required for wetland activities in the following:



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(1) A manmade water body and the wetland fringe of the water body that:

(A) serve a beneficial use; and

(B) are not constructed to fulfill a wetland regulatory purpose;

including storm water retention and detention ponds, ornamental ponds, livestock watering ponds, fishing ponds, or ponds constructed for pollution control purposes.

(2) A newly formed wetland that is not used for:

(A) a compensatory mitigation purpose; or

(B) another regulatory purpose.

(3) A wetland regulated under a federal agricultural law supervised by the Natural Resource Conservation Service of the United States Department of Agriculture.

(4) A Category I wetland smaller than one-half (1/2) acre.

(5) A wetland created solely as the result of actions that were taken for a purpose other than creating the wetland.

(6) Other wetlands, as established by the board.

(c) A permit under subsection (a) is not required for agricultural activities listed under Section 404(f) of the Clean Water Act.

(d) A permit under subsection (a) is not required for any activity for which the department of natural resources has approved a plan to minimize, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish and wildlife and related environmental values and to enhance those resources where practicable.

Sec. 2. The department shall issue an individual permit to a person for wetland activities in an isolated wetland if:

(1) the person meets the requirements of section 3 of this chapter; and

(2) the general permit requirements of section 5 of this chapter do not apply.

Sec. 3. A person qualifies for an individual permit under section 2 of this chapter if the person meets the requirements of the individual permit rule adopted under section 4 of this chapter.

Sec. 4. The board shall adopt a rule before July 1, 2005, for the administration of individual permits under this chapter that must include:

(1) an application form that includes:

(A) the wetland categorization;

(B) a wetland delineation;



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- (C) a project description;
 - (D) a description of the acreage subject to the wetland activity; and
 - (E) site photographs;
- (2) a demonstration that wetland disturbance cannot be avoided;
 - (3) a demonstration that wetland disturbance is minimized;
 - (4) a commitment that water quality in surface waters of the state will not be degraded as the result of the wetland activity;
 - (5) circumstances and conditions for mitigation requirements;
 - (6) the time permitted for the department to make a determination on the application; and
 - (7) a requirement that the department publish notice under IC 5-3-1:

- (A) of receipt of an application for an individual permit; and
- (B) that the department will hold a public hearing on the application in the county where the wetland is located if:
 - (i) a person requests a public hearing not later than fifteen (15) days after the date of publication; and
 - (ii) the department determines there is sufficient interest to hold a public hearing.

Sec. 5. A person qualifies under a general permit for wetland activity if the wetland activity proposed by the person meets the requirements of the general permit rule adopted under section 6 of this chapter.

Sec. 6. The board shall adopt a rule before July 1, 2005, for the administration of general permits under this chapter that must include:

- (1) procedures for submission to the department of a notice of intent to conduct wetland activity under a general permit that includes:
 - (A) a demonstration that wetland disturbance cannot be avoided;
 - (B) a demonstration that wetland disturbance is minimized; and
 - (C) a proposed mitigation project;
- (2) a period of not more than thirty (30) days after the submission of the notice of intent under subdivision (1) during which the department may review whether the criteria for the general permit are met; and
- (3) procedures under which the department:



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(A) may, after a determination under subdivision (2) that the criteria for the general permit are not met, require the person to apply for an individual permit under this chapter; and

(B) must provide to the person a written statement of its reasons for the determination under clause (A).

Sec. 7. (a) The board shall adopt a rule before July 1, 2005, to establish procedures to:

(1) designate specific real property as outstanding state wetlands; and

(2) remove real property from the designation under subdivision (1).

(b) The rule under subsection (a):

(1) may permit designation as outstanding state wetlands only real property that includes:

(A) wetlands that are rare and ecologically important; and

(B) a suitable buffer area surrounding the wetlands; and

(2) must prohibit wetland activity on outstanding state wetlands unless the wetland activity:

(A) is temporary; or

(B) is designed to maintain ecologically important wetland qualities.

(c) If real property is designated under this section as outstanding state wetlands:

(1) the real property must be designated as a permanent conservation easement under IC 32-23-5; and

(2) the department:

(A) shall compensate the owner of the real property for the loss of development rights to the property; and

(B) if the designation under subdivision (1) results in a reduction of the property tax assessment of the real property, annually pay to the county an amount equal to the resultant reduction of property taxes due and payable on the property during the year.

Sec. 8. (a) The department shall create and maintain a registry of newly formed wetlands that maintains documentation that the area was not a wetland at a particular time.

(b) The department may charge:

(1) a fee of not more than one hundred dollars (\$100) for registration in the registry under subsection (a); and

(2) a fee of not more than fifty dollars (\$50) per year to maintain the registration.



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(c) The department shall use the revenue from the fees under subsection (b) for the operation of the registry under subsection (a).

Sec. 9. (a) A requirement for compliance with surface water quality standards is incorporated into each permit under this chapter for the duration of the wetland activity.

(b) Noncompliance with the permit is not a violation of water quality standards unless the quality of the water leaving the project area is impaired.

SECTION 37. IC 13-18-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23. Indiana Wetlands Mitigation Bank Program

Sec. 1. The bank program is established to promote the restoration, creation, or enlargement of wetlands that may be used as mitigation credits to offset losses of regulated wetlands occurring as a result of development projects.

Sec. 2. (a) Mitigation credits acquired from owners of wetlands registered in the bank under this chapter may be used to provide compensatory mitigation for projects at any location in Indiana involving a discharge of fill materials into:

- (1) a state regulated wetland; or
- (2) if the mitigation credits meet applicable eligibility criteria under federal law, a CWA wetland.

(b) The application of mitigation credits acquired under this chapter to compensatory mitigation needs associated with a project involving the discharge of fill materials into a state regulated wetland must be consistent with the following:

- (1) The mitigation credits may be applied regardless of the relative locations of the wetland in the bank on which the credits are based and the state regulated wetland to be filled.
- (2) The ratio of mitigation credits to the acreage of state regulated wetland to be filled must be:

(A) one to one (1:1) if the mitigation credits are based on a wetland of the same general type as the state regulated wetland to be filled;

(B) three to one (3:1) if the state regulated wetland being filled is a Category III wetland; or

(C) one and one-half to one (1.5:1) in all other cases.

(c) For purposes of subsection (b)(2), the general wetland types are:

- (1) open water/emergent wetlands;



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(2) scrub/shrub wetlands; and

(3) forested wetlands.

(d) Any additional conditions determined by the board in rules adopted under subsection (f) must be reasonable, necessary, and consistent with this chapter.

(e) The department shall administer the bank program in accordance with this chapter.

(f) The board shall adopt procedural rules under IC 4-22-2 and IC 13-14 not later than December 1, 2004, to facilitate:

(1) the administration of the bank; and

(2) transactions involving mitigation credits for wetlands registered with the bank;

consistent with this chapter. Implementation of this chapter may not be delayed while rules are being developed by the board under this subsection.

Sec. 3. (a) A wetland must be registered with the bank before mitigation credits based on the wetlands may be sold for use under this chapter. Wetlands that may be registered with the bank include:

(1) volitional wetlands existing before the effective date of this chapter; and

(2) volitional wetlands restored, created, or enlarged after the effective date of this chapter.

(b) To register a wetland with the bank, the owner of the wetland must submit a registration form to the department that:

(1) identifies the voluntary wetland by location and acreage;

(2) provides the name and address of the owner;

(3) states when the restoration, creation, or enlargement of the wetland began;

(4) represents that the wetland is not:

(A) a state regulated wetland; or

(B) a CWA wetland;

(5) includes a wetlands delineation report that describes:

(A) the type of the wetland;

(B) the quality of the wetland, taking into consideration its age, type, and hydrogeologic setting; and

(C) the expected stability of the wetland; and

(6) includes a one (1) time registration fee in the amount of the lesser of:

(i) ten dollars (\$10) per acre; or

(ii) one hundred dollars (\$100) per wetland.

(c) The department shall provide a form for registration of

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wetlands with the bank.

(d) The department may refuse to register a wetland proposed for the bank if:

- (1) the quality of the wetland is not reasonably consistent with its age, type, and hydrogeologic setting; or
- (2) the wetland's features and quality are not stable.

(e) The department shall:

- (1) give written notice of its refusal to register a wetland in the bank to the person that submitted the registration form for the wetland not later than ninety (90) days after the department's receipt of the registration form; and
- (2) support its refusal with a statement of reasons.

If notification of a refusal to register a wetland is not provided as described in this subsection, a wetland for which a registration form is submitted to the department in accordance with this section is considered to be registered in the bank.

(f) A property owner may notify the department of intent to register a wetland with the bank before restoration, creation, or enlargement of the wetland.

(g) The owner of a wetland that has been registered with the bank may cancel the registration and withdraw the wetland from the bank at any time before mitigation credits are sold under this chapter on the basis of the registered wetland.

Sec. 4. (a) A person may acquire wetlands mitigation credits to satisfy compensatory mitigation needs by the purchase of credits at market price from an owner of wetlands acreage registered in the bank. The mitigation credits may be used to provide compensatory mitigation for projects involving a discharge of fill materials into:

- (1) a state regulated wetland; or
- (2) if the credits satisfy federal criteria for mitigation banks, a CWA wetland.

One (1) unit of credit corresponds to one (1) acre of registered wetlands. Fractional credits may be purchased.

(b) A person that purchases wetlands mitigation credits under this section shall do the following:

- (1) Not later than five (5) days after the date of purchase, give the department a notice of the purchase in writing that includes the following:
 - (A) The name and address of the purchaser.
 - (B) The name and address of the seller.
 - (C) The amount of credits purchased.



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(D) The registration number and location of the registered wetland corresponding to the credits purchased.

(E) The purchase price.

(2) Pay a fee of twenty-five dollars (\$25) to the department with respect to each sale of credits of any amount based on a wetland registered with the bank.

(c) A registered wetland that is the basis of a sale of mitigation credits under subsection (a) is reclassified as a state regulated wetland when the credits sold correspond to the entire acreage of the registered wetland.

(d) If the sale of credits involves less than the total acreage of the registered wetland:

(1) the fraction of the acreage of the registered wetland not committed to a sale of credits remains available for future sale of mitigation credits; and

(2) the wetland is reclassified as a transitional registered wetland.

(e) A transitional registered wetland is reclassified as a state regulated wetland when the cumulative credits sold with respect to the transitional registered wetland correspond to the entire acreage of the wetland.

(f) No action by the department is required to effectuate the reclassification of a wetland under this section.

(g) A wetland may not remain in transitional registered wetland status for more than ten (10) years. A transitional registered wetland is reclassified as a state regulated wetland at the end of the ten (10) year period beginning on the date of the initial sale of credits based on the wetland if the full number of potential mitigation credits corresponding to the transitional registered wetland is not sold by the end of that period. If a wetland has been reclassified as a state regulated wetland under this subsection, the owner of the wetland property may continue to sell the credits corresponding to the wetland that remain unsold at the time of the reclassification.

(h) A person that has purchased mitigation credits under this section but has not applied the credits to compensatory mitigation requirements for a wetlands development project may resell some or all of the credits to another person. If the owner of a registered wetland redeems mitigation credits previously sold to another person by repurchasing the credits, the amount of redeemed credits is restored to the remaining credit balance in the bank pertaining to the registered wetland.

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(i) Each owner of a registered wetland shall provide to the department not later than March 1 of each year a summary of transactions involving credits in the registered wetland that occurred during the preceding calendar year.

(j) The department shall maintain records on each wetland registered in the bank that include:

- (1) the acreage and location of the wetland;
- (2) the cumulative number of mitigation credits sold on the basis of the registered wetland;
- (3) the remaining balance of credits available for sale attributable to the registered wetland;
- (4) the date of each sale of mitigation credits and the number of credits sold; and
- (5) the name and address of the current owner of each mitigation credit sold on the basis of the registered wetland.

SECTION 38. IC 13-19-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board consists of ~~thirteen (13)~~ **fourteen (14)** members as follows:

- (1) The following ex officio, **nonvoting** members:
 - (A) The commissioner of the state department of health.
 - (B) The director of the department of natural resources.
 - (C) The lieutenant governor.
- (2) The following ten (10) members, who shall be appointed by the governor based on recommendations from representative constituencies:
 - (A) One (1) representative of agriculture.
 - (B) One (1) representative of manufacturing.
 - (C) One (1) representative of environmental interests.
 - (D) One (1) representative of labor.
 - (E) One (1) representative of local government.
 - (F) One (1) health professional who holds a license to practice in Indiana.
 - (G) One (1) representative of small business.
 - (H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.
 - (I) One (1) representative of the solid waste management industry.
 - (J) One (1) representative of the solid waste management districts.
- (3) **One (1) nonvoting advisory member who:**
 - (A) **is an economist; and**



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(B) shall be appointed by the governor.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 39. IC 13-19-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~five~~ **six (6)** of the appointed members of the board may be members of the same political party.

SECTION 40. IC 13-19-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. ~~Seven (7)~~ **Six (6)** members of the board ~~four (4) of whom must be appointed members of the board;~~ constitute a quorum.

SECTION 41. IC 13-19-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. The governor shall annually select:

- (1) one (1) of the ~~ten (10)~~ appointed members of the board to serve as chairman; and
- (2) another of the appointed members of the board to serve as vice chairman.

SECTION 42. IC 13-19-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) The board shall ~~select from a list of three (3) qualified persons recommended by the governor;~~ **contract with:**

- (1) an **individual who:**
 - (A) **is an independent third party; who and**
 - (B) **is not an employee of the state;**
- (2) **a business firm; or**
- (3) **a legal firm;**

to serve as technical secretary of the board.

(b) ~~During the interim between meetings of the board;~~ The ~~department~~ **technical secretary** shall do the following:

- (1) Handle correspondence.
- (2) Make or arrange for investigations and surveys.
- (3) Obtain, assemble, or prepare reports and data as directed by the board.

~~(c) The technical secretary shall:~~

- (4) Review all materials prepared for the board by the department to make any necessary revisions.
- (5) **Serve as a hearing officer as directed by the board.**
- (6) **Convene and lead meetings to discuss matters pending before the board.**
- (7) **Initiate and manage rulemaking efforts in cooperation**



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with the department.

(c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.

(d) The technical secretary is not a voting member of the board.

SECTION 43. IC 13-19-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board may select from a list of three (3) qualified persons recommended by the governor, contract with:

(1) an individual who:

(A) is an independent third party; ~~who and~~

(B) is not an employee of the state; or

(2) a legal firm;

to serve as legal counsel.

(b) The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the **technical secretary and the** department for legal accuracy and sufficiency and direct the **technical secretary and the** department to make any necessary revisions.

~~(b)~~ (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

SECTION 44. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 13-17-2-6; IC 13-18-1-4; IC 13-19-2-4.

SECTION 45. [EFFECTIVE JULY 1, 2003] (a) The definitions in IC 13-11-2, as amended by this act, apply throughout this SECTION.

(b) Before September 1, 2003, the department shall develop and present to the water pollution control board a policy or statement under IC 13-14-1-11.5 that does the following:

(1) Requires, consistent with IC 13-18-22, as added by this act, the filing of an application with the department for an individual permit for wetland activity that occurs:

(A) after June 30, 2003; and

(B) before the effective date of the rules adopted under:

(i) IC 13-18-22-4; and

(ii) IC 13-18-22-6;

both as added by this act.

(2) With respect to an application under subdivision (1), establishes:

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- (A) the factors the department will consider in reviewing the application;
 - (B) procedures for:
 - (i) filing of applications;
 - (ii) action by the department; and
 - (iii) appeals of actions by the department; and
 - (C) the period not to exceed one hundred twenty (120) days within which the department must act.
- (3) Establishes the attributes of categories of isolated wetlands to which the filing requirements of subdivision (1) apply that are consistent with the following:
- (A) For a Category I wetland, characterized by:
 - (i) hydrologic isolation;
 - (ii) low species diversity;
 - (iii) a predominance of nonnative species, including greater than fifty percent (50%) areal cover for vegetative species;
 - (iv) no significant habitat or wildlife use; and
 - (v) limited potential to achieve beneficial wetlands functions.
 - (B) For a Category II wetland, characterized by:
 - (i) domination by native species but generally without the presence of, or the habitat for, rare, threatened, or endangered species; and
 - (ii) degradation, but with reasonable potential for reestablishing wetlands functions.
 - (C) For a Category III wetland, characterized by:
 - (i) high levels of diversity;
 - (ii) high proportion of native species; and
 - (iii) high functional values.
- (4) Establishes, consistent with IC 13-18-22, as added by this act, criteria for general permits:
- (A) comparable to those addressed by nationwide permits under Section 404 of the Clean Water Act; and
 - (B) for wetland activity affecting:
 - (i) Category I wetlands; and
 - (ii) Category II wetlands;
 smaller than one-half (1/2) acre.
- (5) Addresses any other matter the department considers necessary to administer the process described in this subsection:
- (A) after June 30, 2003; and

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(B) before the effective date of the rules adopted under:

(i) IC 13-18-22-4; and

(ii) IC 13-18-22-6;

both as added by this act.

(c) The department's policies or statements under subsection (b) must, to the greatest extent possible, be consistent with IC 13-18-22, as added by this act.

(d) The department shall, before November 1, 2003, and again before November 1, 2004, report to the environmental quality service council on the progress of:

(1) the development of the policies or statements under subsection (b); and

(2) the adoption of rules under:

(A) IC 13-15-1-2; and

(B) IC 13-18-22.

(e) The following expire September 1, 2005:

(1) The department's statement or policy under subsection (b).

(2) This SECTION.

SECTION 46. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

(1) Monitor the implementation of this act.

(2) Review the role of the department of environmental management with respect to action on requests under section 401 of the Clean Water Act (33 U.S.C. 1341) for certifications concerning projects subject to permit requirements under section 404 of the Clean Water Act (33 U.S.C. 1344), and recommend whether statutory direction is appropriate or necessary in defining that role.

(3) Complete its consideration of the options for statutory definition of "private pond" as applied in the definition of "waters" in IC 13-11-2-265, and recommend an option, including a statement of rationale.

(4) Evaluate the tensions between existing programs for wetlands protection and for local drainage, and recommend principles and policies for ameliorating those tensions, taking into consideration the rationale and objectives for both programs.

(5) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:

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(A) as a long term strategy, the types and functions of wetlands that are valued in particular geographic areas; and

(B) the means for restoring, maintaining, and protecting wetlands, including identification of agencies to be involved and the incentives to be offered.

(6) Recommend:

(A) composition;

(B) responsibilities;

(C) staffing; and

(D) funding;

of a permanent state wetlands conservation council.

(7) Evaluate the usefulness of a statute to create an Indiana wetland conservation commission for the purpose of coordinating state agency implementation of the state wetland policy.

(8) Submit its final report on the matters described in the preceding four subdivisions before November 1, 2003, to:

(A) the governor; and

(B) the executive director of the legislative services agency.

(b) The environmental quality service council shall:

(1) conduct an ongoing evaluation during the period from July 1, 2003, to November 1, 2006, of the implementation of:

(A) the permit program for wetlands under IC 13-18-22; and

(B) the Indiana wetlands mitigation bank program under IC 13-18-23;

both as established under this act;

(2) recommend any adjustments to either program referred to in subdivision (1) that are considered advisable to improve the operation and effectiveness of the programs, consistent with the purpose of providing an efficient permitting process and enhancing the attainment of an overall goal of no net loss of wetlands; and

(3) submit its final report on the matters described in this subsection before November 1, 2005, to:

(A) the governor; and

(B) the executive director of the legislative services agency.

(c) This SECTION expires November 1, 2006.

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SECTION 47. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1221 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 11, nays 2.

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